IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 43 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FORSHAS FORGING PVT.LTD.

Versus

BARODA ELECTRO ENGINEERING PRODUCTS PVT.LTD.

Appearance:

1. COMPANY PETITION No. 43 of 2001

HL PATEL ADVOCATES for Petitioner No. 1

DR MAHESH THAKAR for Respondent No. 1

MS MONA N TRIVEDI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 16/03/2005

ORAL JUDGEMENT

The petitioner has filed this petition under Section 433 (e) read with Section 434 of the Companies

Act, 1956 for winding up of the respondent Company.

2. This Court has issued notice on 05.03.2001. Pursuant to the said notice, the respondent Company has filed its appearance through Dr. Mahesh Thakkar and Ms. Mona N. Trivedi, learned advocates. A statement was made on behalf of the respondent Company before this Court on 03.04.2001 that the respondent Company will deposit a sum of Rs. 50,000/- in this Court. On 09.08.2001, this Court has observed that the parties were likely to settle the dispute out of Court. Again on 10.09.2001, this Court has observed that it was stated by Dr. Mahesh Thakkar, learned advocate for the respondent Company that one opportunity be granted to explore the possibility of settlement and that the responsible officer of the respondent Company shall remain personally present on the next date to negotiate the possibility of settlement and if the settlement was not arrived at, the matter shall be proceeded on merits. Again on 19.09.2001, this Court has observed that the learned counsel for the parties have stated before the Court that the dispute has been amicably settled and the amount to be paid by the respondent Company was agreed between the petitioner and the respondent and that the part payment would be paid by the respondent Company on 05.10.2001 and for the remaining amount, settlement would be arrived at between the parties.

3. Thereafter on 08.10.2001, this Court has passed an order on the basis of the consent terms arrived at between the parties. It was indicated in the said consent terms that the respondent Company has agreed in principle to pay principal amount of Rs.5,26,000/- and that the said amount was to be paid in installments indicated in para 2 of the consent terms; commencing from 08.10.2001 for Rs.76,000/- and the amount of Rs. 5,26,000/- in installments, as shown in para 2 of the consent terms, are to be paid on or before 30.06.2002. The Court has further observed that the demand draft of Rs.76,000/- has been received by the petitioner from the respondent Company pursuant to the consent terms filed on 08.10.2001. The consent terms, inter alia, provides that, in the event of any default by the respondent Company, the petitioner would be at liberty to request this Court for revival of this petition, without prejudice to any other action available to the petitioner under the law. The Court has further observed that the Director of the respondent Company has filed an undertaking and the same was kept on record. The Court has further observed that the Director of the respondent Company will be abide by the consent terms. In view of

the said consent terms filed and admitted by the petitioner as well as respondent Company, this petition was disposed of with a liberty to the petitioner to revive the petition in future in case of any difficulty, as suggested in para 2,3, & 4 of the consent terms.

4. Subsequent to the said order, the petitioner has filed M.C.A. No. 52 of 2002 for contempt of Court under Article 215 of the Constitution of India read with the Contempt of Courts Act, 1971. However, the said application was dismissed as withdrawn. The petitioner thereafter filed OJMCA No. 66 of 2002 for revival of this petition which was granted vide order dated 20.12.2002.

5. The present petition thereafter came up for hearing on 28.06.2004. Since the respondent Company has failed to discharge its liabilities and has not acted as per the consent terms, the petition was admitted. However, at the time of passing the said order, the learned advocate for the respondent Company was not present and hence, the order of advertisement was deferred.

6. On 04.08.2004, the petition has again came up for hearing and yet nobody appeared on behalf of the respondent Company. The Court, therefore, passed the order of advertisement and the petition was ordered to be advertised in "Indian Express" & "Loksatta-Jansatta" both Vadodara editions indicating the date of final hearing on 09.09.2004. Publication of advertisement in Official Gazette was dispensed with. Since the petitioner has failed to effect the publication within the time granted by this Court, a request was made to the Court for extension of time and accordingly vide order dated 13.12.2004, this Court has extended the returnable date upto 25.01.2005. On 03.03.2005, Mr. D.N. Vakil, learned advocate appearing for the petitioner has submitted that through oversight, the advertisement was given in "Western Times" instead of "Loksatta-Jansatta". However, the advertisement in "Indian Express" was given as directed. Hence, the request was made to condone the said mistake and to consider the publication of the advertisement effected by the petitioner as sufficient compliance of the order dated 04.08.2004. The Court has considered the submission of the learned advocate appearing for the petitioner and treated the said advertisement as sufficient compliance of the order. Accordingly, affidavit was filed by Shri Rajiv Doshi, Director of the petitioner Company on 12.03.2005 along with which relevant newspaper cuttings were also produced

on record.

7. The petition thereafter came up for hearing today. Despite repeated calls in first and second session, nobody appeared on behalf of the respondent Company.

8. In view of the above facts and circumstances of the case and in view of the fact that the respondent Company has failed to discharge its liability and has also committed breach of the consent terms as well as undertaking filed before this Court, the respondent Company is required to be wound up. The very fact that the Company could not make the payment even by installments which were agreed upon, itself shows that the Company has failed and neglected to pay its debts to the petitioner. The financial substratum of the respondent Company has been totally destroyed and it is not in public interest to allow such Company to carry out its business activities. The respondent Company is, therefore, ordered to be wound up. The O.L. attached to this Court is hereby appointed as the Liquidator of the respondent Company. He is directed to intimate to the Secured Creditors, if any and the Directors of the respondent Company before taking possession of the assets of the respondent Company, and, before appointing Security Agency and/or taking inventory of the assets of the Company with the help of the Valuer, the O.L. shall take prior permission of this Court.

9. With this direction and observation, this petition is accordingly allowed.

[K.A. PUJ, J.]

#Savariya#

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